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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

10 TRAVELERS CASUALTY INSURANCE  
COMPANY OF AMERICA, et al.,

## Plaintiffs,

No. C 12-2637 PJH

v.

13 AMERICAN HOME REALTY  
14 NETWORK, INC., et al.,

## Defendants.

## **ORDER GRANTING MOTION TO DISMISS**

17 Defendants' motion to dismiss the complaint in the above-entitled action came on for  
18 hearing before this court on January 16, 2013. Plaintiffs appeared by their counsel  
19 Nicholas J. Boos, and defendants appeared by their counsel Alexander J. Berline. Having  
20 read the parties' papers and carefully considered their arguments and the relevant legal  
21 authority, the court hereby GRANTS the motion as follows.

## BACKGROUND

23 In this insurance coverage action, plaintiffs Travelers Casualty Insurance Company  
24 of America and Travelers Indemnity Company of Connecticut (collectively, "Travelers")  
25 seek a judicial declaration that they have no duty to defend defendants American Home  
26 Realty Network, Inc. ("AHR") and Jonathan Cardella ("Cardella") in two underlying copyright  
27 infringement actions pending in, respectively, the U.S. District Court for the District of  
28 Maryland and the U.S. District Court for the District of Minnesota.

1       Travelers issued three commercial general liability insurance policies that are at  
2 issue in this lawsuit. On March 28, 2012, Metropolitan Regional Information Systems, Inc.  
3 ("Metropolitan") filed a complaint against AHR, Cardella, and the National Association of  
4 Realtors in the U.S. District Court for the District of Maryland (No. C-12-0954) (the  
5 "Metropolitan action"). Metropolitan asserts claims against AHR for copyright infringement  
6 (direct, induced, contributory, and vicarious), false designation of origin, unfair competition  
7 under the Lanham Act, conversion, and unjust enrichment, based on defendants' alleged  
8 misappropriation of information and photographs from Metropolitan's copyrighted Multiple  
9 Listing Services ("MLS") database that serves Maryland, Washington D.C., Virginia, and  
10 portions of Pennsylvania, Delaware, and West Virginia.

11       On April 18, 2012, the Regional Multiple Listing Service of Minnesota filed a  
12 complaint against AHR in the U.S. District Court for the District of Minnesota (No. C-12-  
13 0965) (the "Regional action"), alleging copyright infringement of compilation content, and  
14 copyright infringement of photographs, based on defendants' alleged misappropriation of  
15 the plaintiff's copyrighted MLS database serving Minnesota and western Wisconsin.

16       AHR notified Travelers of the pendency of the Metropolitan complaint on April 9,  
17 2012, and requested a defense and indemnity for AHR and Cardella. After an  
18 investigation, Travelers sent a letter dated June 7, 2012, in which it accepted the tender of  
19 defense under a full reservation of rights. AHR also notified Travelers of the pendency of  
20 the Regional complaint on April 25, 2012, and requested a defense and indemnity for AHR.  
21 After investigating the matter, Travelers declined the tender, in a letter dated June 19,  
22 2012.

23       Travelers filed the present action on May 22, 2012, seeking a judicial declaration as  
24 to whether it has a duty to defend AHR or Cardella in the Metropolitan action and as to  
25 whether it has a duty to defend AHR in the Regional action; and also seeking  
26 reimbursement of its attorneys' fees and expenses already incurred in the defense of the  
27 Metropolitan action. On September 18, 2012, Travelers filed a first amended complaint  
28 ("FAC").

1 Defendants now seek an order dismissing the FAC, or in the alternative, staying it  
2 pending resolution of the Metropolitan action.

3 **DISCUSSION**

4 A. Legal Standard

5 Under the Declaratory Judgment Act (“DJA”), the Court “may declare the rights and  
6 other legal relations of any interested party seeking such declaration” when there is an  
7 “actual controversy.” 28 U.S.C. § 2201(a); see also U.S. Const. art. III, § 2, cl. 1 (limiting  
8 the federal judicial power to actual cases and controversies). “[T]he question in each case  
9 is whether the facts alleged, under all the circumstances, show that there is a substantial  
10 controversy, between parties having adverse legal interests, of sufficient immediacy and  
11 reality to warrant the issuance of a declaratory judgment.” MedImmune, Inc. v. Genentech,  
12 Inc., 549 U.S. 118, 127 (2007) (quoting Maryland Cas. Co. v. Pac. Coal & Oil Co., 312 U.S.  
13 270, 273 (1941)).

14 The burden is on the party seeking declaratory relief to establish the existence of an  
15 actual controversy. DaimlerChrysler Corp. v. Cuno, 547 U.S. 332, 342 (2006). If the court  
16 determines that an actual controversy does not exist, it may dismiss the declaratory relief  
17 action for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1).

18 If the court determines that an actual controversy does exist, it must then decide  
19 “whether to exercise its discretion to take jurisdiction over the declaratory judgment action.”  
20 Principal Life Ins. Co. v. Robinson, 394 F.3d 665, 669 (9th Cir. 2004). In making this  
21 determination, “[t]he district court should avoid needless determination of state law issues;  
22 it should discourage litigants from filing declaratory actions as a means of forum shopping;  
23 and it should avoid duplicative litigation.” Government Emps. Ins. Co. v. Dizol, 133 F.3d  
24 1220, 1225 (9th Cir. 1998) (citing Brillhart v. Excess Ins. Co. of Am., 316 U.S. 491 (1942));  
25 see also id. at 1225 n.5 (citing additional relevant factors).

26 Nevertheless, “there is no presumption of abstention in declaratory actions  
27 generally, nor in insurance coverage cases specifically.” Id. at 1225. That is, there is no  
28 authority barring an insurer from invoking diversity jurisdiction to bring a declaratory

1 judgment action against an insured on an issue of coverage. Id. Moreover, if other claims  
2 are joined with an action for declaratory relief, the district court should not, as a general  
3 rule, remand or decline to entertain the claims for declaratory relief. Id.

4 On the other hand, the mere presence of a claim for monetary relief does not mean  
5 that the district court must accept jurisdiction, where the action is “primarily declaratory in  
6 nature.” United Nat'l Ins. Co. v. R&D Latex Corp., 242 F.3d 1102, 1112 (9th Cir. 2001).  
7 Rather, the court must analyze

8 whether the claim for monetary relief is independent in the sense that it could  
9 be litigated in federal court even if no declaratory claim had been filed. In  
10 other words, the district court should consider whether it has subject matter  
jurisdiction over the monetary claim alone, and if so, whether that claim must  
be joined with one for declaratory relief.

11 Id. at 1113.

12 B. Defendants' Motion

13 Defendants make four main arguments in support of their motion – that this case  
14 should be dismissed because exercising jurisdiction under the circumstances presented by  
15 this case constitutes reversible error, and even if it does not, the Declaratory Judgment Act  
16 favors dismissal; that dismissal is also appropriate because the court lacks subject matter  
17 jurisdiction; that dismissal is further appropriate because this claim is not ripe for  
18 adjudication; and that if the court finds that jurisdiction is mandatory with regard to the  
19 Metropolitan action claims, a stay is appropriate until after the Metropolitan action has been  
20 resolved.

21 As the court indicated at the hearing, there is nothing *per se* improper about a  
22 federal district court exercising jurisdiction under the Declaratory Judgment Act over an  
23 insurance coverage dispute, regardless of where the underlying action is pending.  
24 Nevertheless, the court must have jurisdiction over the complaint.

25 The Declaratory Judgment Act does not create an independent basis for subject  
26 matter jurisdiction. See Vaden v. Discovery Bank, 556 U.S. 49, 70 n.19 (2009) (“the  
27 Declaratory Judgment Act does not enlarge the jurisdiction of the federal courts; it is  
28 procedural only”) (quotations omitted); Gritchen v. Collier, 254 F.3d 807, 811 (9th Cir.

1 2001) (“The Declaratory Judgment Act . . . applies only if federal jurisdiction independently  
2 exists”); Staacke v. United States Secretary of Labor, 841 F.2d 278, 280 (9th Cir. 1988)  
3 (Declaratory Judgment Act does not itself confer federal subject matter jurisdiction; rather,  
4 a declaratory judgment plaintiff must establish an independent basis for such jurisdiction.).  
5 Here, Travelers asserts diversity jurisdiction pursuant to 28 U.S.C. § 1332. Defendants  
6 contend that dismissal is warranted because the amount-in-controversy requirement has  
7 not been met, and thus, the court lacks subject matter jurisdiction.

8 Diversity jurisdiction is measured at the time the lawsuit is filed. Grupo Dataflux v.  
9 Atlas Global Group, LP, 541 U.S 567, 570-72 (2004); see also Morongo Band of Mission  
10 Indians v. Calif. State Bd. of Equalization, 858 F.2d 1376, 1380 (9th Cir. 1988) (looking to  
11 original complaint, and not amended complaint, for subject matter jurisdiction).

12 Defendants assert that because Travelers declined coverage under the  
13 Regional action, there is no amount in controversy as to that case. As for both the  
14 Metropolitan case and the Regional case, defendants argue that because Travelers had  
15 not issued a coverage decision as of May 22, 2012 when the original complaint was filed  
16 (and as to the Metropolitan case, had not sent the reservation of rights agreeing to defend  
17 in that case), there was no amount in controversy as of that date as to either of the  
18 underlying actions. For this reason, defendants assert, Travelers’ defense costs at the  
19 time the present action was commenced were close to zero – and at any rate, nowhere  
20 near the \$75,000 jurisdictional minimum.

21 The court finds that Travelers’ motion to dismiss the case for lack of subject matter  
22 jurisdiction must be GRANTED. As noted above, diversity jurisdiction is determined as of  
23 the time the complaint is filed. See Morongo Band, 858 F.2d at 1380. Since Travelers did  
24 not notify defendants that it had accepted the tender of the Metropolitan action until June 7,  
25 2012, and had not incurred any defense costs until that point, there was no amount in  
26 controversy as of May 22, 2012 when the complaint was filed – and thus, no diversity  
27 jurisdiction. Also, while Travelers has incurred defense costs in the Metropolitan action  
28 since June 2012 when it accepted the tender, it appears that there has never been an

1 amount in controversy as to the Regional action, since Travelers refused the tender and  
2 has not provided any defense.

3 Travelers' position, as stated in its papers and by counsel at the hearing, is that  
4 when it filed the complaint, it alleged in "good faith" that there was \$75,000 in controversy,  
5 and that the court is required to accept that representation. However, it seems clear that  
6 when Travelers filed the complaint on May 22, 2012, it was fully aware that it had not  
7 accepted the tender of defense as of that date.

8 Having found that there was no subject matter jurisdiction at the time the original  
9 complaint was filed, the court finds it unnecessary to address defendants' arguments  
10 regarding the Dizol/Brillhart factors and the discretionary exercise of jurisdiction over claims  
11 brought under the Declaratory Judgment Act, other than to observe that it finds Travelers'  
12 arguments to be more persuasive. The alternative motion to stay is DENIED as moot.

### 13 CONCLUSION

14 In accordance with the foregoing, the motion to dismiss is GRANTED. Should  
15 Travelers opt to re-file the action, seeking a judicial declaration regarding their duty to  
16 defend in both the Metropolitan and Regional actions, the court notes that the joinder of  
17 claims relating to both underlying actions may be improper. See Federal Rules of Civil  
18 Procedure 20, 21.

### 19 20 IT IS SO ORDERED.

21 Dated: January 24, 2013



22 PHYLЛИS J. HAMILTON  
United States District Judge

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